

STATE OF MICHIGAN
IN THE SUPREME COURT

CLAM LAKE TOWNSHIP, a Michigan
general law township; and
HARING CHARTER TOWNSHIP, a Michigan
charter township

Appellants,

v

THE STATE BOUNDARY COMMISSION,
an administrative agency within the Michigan
Department of Licensing and Regulatory
Affairs; TERIDEE LLC, a Michigan limited
liability company; and THE CITY OF
CADILLAC, a Michigan home rule city,

Appellees.

Supreme Court Case No. 151800

Court of Appeals Docket No. 325350

Wexford County Circuit Court
Case No. 14-25391-AA

State Boundary Commission Docket
No. 13-AP-2

Ronald M. Redick (P61122)
Mika Meyers Beckett & Jones, PLC
Attorneys for Appellants
900 Monroe Avenue, NW
Grand Rapids, MI 49503
(616) 632-8000

Randall W. Kraker (P27776)
Brion B. Doyle (P67870)
Varnum, LLP
Attorneys for Appellee, TeriDee, LLC
Bridgewater Place
P.O. Box 352
Grand Rapids, MI 49501-0352
(616) 336-6000

Michael D. Homier (P60318)
Laura J. Genovich (P72278)
Foster, Swift, Collins & Smith, P.C.
Attorneys for Appellee, City of Cadillac
1700 East Beltline, N.E., Suite 200
Grand Rapids, MI 49525
(616) 726-2230

Bill Schuette (P32532)
Patrick Fitzgerald (P69964)
Attorney General, State of Michigan
Attorney for Appellee, the State
Boundary Commission
525 W. Ottawa, 7th Floor
P.O. Box 30212
Lansing, MI 48909
(517) 373-1110

**APPELLEE CITY OF CADILLAC'S BRIEF IN OPPOSITION
TO APPLICATION FOR LEAVE TO APPEAL**

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BASIS OF JURISDICTION

The City agrees that Appellants have timely filed an Application for Leave to Appeal pursuant to MCR 7.302.

STATEMENT OF QUESTIONS PRESENTED

- I.** Under Act 425 of 1984, which allows for conditional transfers of property between local governments, an annexation cannot be approved by the State Boundary Commission if an “Act 425” agreement for the same property is in effect. However, if the Act 425 agreement is illusory (a “sham”), then the Commission retains jurisdiction to consider an annexation request.

Here, after conducting a public hearing, the State Boundary Commission determined that the Act 425 agreement approved by Haring Township and Clam Lake Township was a sham agreement that did not divest the Commission of jurisdiction over the property owner’s annexation petition. The Commission approved the annexation based on a record of 2,000+ pages of documents, in addition to the testimony and argument received at the public hearing. The circuit court affirmed the Commission’s decision, finding that it was supported by competent, material, and substantial evidence on the whole record. The Michigan Court of Appeals denied leave to appeal.

- A. Did the Commission have the authority to determine whether the Townships’ Act 425 Agreement was a “sham” agreement that did not, in fact, deprive the Commission of jurisdiction over the annexation petition?**

The State Boundary Commission answered:	Yes.
The circuit court answered:	Yes.
Appellee, the City of Cadillac, answers:	Yes.
Appellee, TeriDee LLC, will answer:	Yes.
Appellants, Haring and Clam Lake, answer:	No.

- B. Is the Townships’ challenge to the Commission’s jurisdiction moot, given that the circuit court, in a separate action between the parties, found that the Act 425 Agreement is invalid?**

The State Boundary Commission answered:	<i>Did not address.</i>
The circuit court answered:	<i>Did not address.</i>
Appellee, the City of Cadillac, answers:	Yes.
Appellee, TeriDee LLC, will answer:	Yes.
Appellants, Haring and Clam Lake, answer:	No.

C. Was the Commission's decision supported by competent, material, and substantial evidence on the whole record?

The State Boundary Commission answered:	Yes.
The circuit court answered:	Yes.
Appellee, the City of Cadillac, answers:	Yes.
Appellee, TeriDee LLC, will answer:	Yes.
Appellants, Haring and Clam Lake, answer:	No.

D. Did the circuit court correctly reject the Townships' unpreserved argument that the annexation proceeding was barred by collateral estoppel?

The State Boundary Commission answered:	<i>Issue was not raised.</i>
The circuit court answered:	Yes.
Appellee, the City of Cadillac, answers:	Yes.
Appellee, TeriDee LLC, will answer:	Yes.
Appellants, Haring and Clam Lake, answer:	No.

**INTRODUCTION &
GROUNDS FOR DENYING LEAVE TO APPEAL**

This is an unexceptional administrative appeal of a decision of the State Boundary Commission that does not warrant review by this Court. Appellants have already pursued, and lost, their appeal by right to the circuit court, and the Michigan Court of Appeals has denied their (nearly identical) application for leave to appeal.

This case arises out of Appellants', Haring Charter Township and Clam Lake Township (the "Townships"), fierce and steadfast opposition to development of vacant property located in Wexford County, Michigan. The Townships appealed an administrative decision of the State Boundary Commission ("Commission") to approve an annexation petition filed by Appellee, TeriDee, LLC ("TeriDee"), which transfers certain property into the jurisdiction of Appellee, City of Cadillac ("City"). The annexation will allow for economic development of the property and bring desperately needed revitalization to an area that has been hit hard by the recession.

For more than seven years, TeriDee has endeavored to spur economic growth in Wexford County by developing its property located near highways M-55 and US-131. To that end, TeriDee has twice petitioned for annexation of its property in Clam Lake Township to the City, which would allow for development of the property. Unfortunately, Clam Lake has long opposed such development, and it has done everything in its power to block economic growth. Clam Lake previously refused to allow the property to be rezoned to allow for commercial development, and its citizens also voted against an Act 425¹ Agreement between Clam Lake and the City, which would have conditionally transferred the property to the City and allowed for economic development.

¹ Public Act 425 of 1984, MCL 124.21 *et seq.* ("Act 425").

In 2011, TeriDee filed an annexation petition to transfer the property into the City. Clam Lake immediately entered into a sham Act 425 Agreement with Haring Township in a transparent attempt to block the annexation, which the Commission found was an invalid, illusory agreement. The Commission, however, denied the annexation petition for other reasons. No appeal was taken from that decision.

Two years later, after hearing a rumor that TeriDee would be filing a new annexation petition, Clam Lake and Haring cooked up another sham Act 425 Agreement to attempt to divest the Commission of jurisdiction over the annexation request. The timing of the agreement and circumstances surrounding its approval, along with a series of incriminating e-mails between the Townships' officials, establish that the Act 425 Agreement was manufactured solely to divest the Commission of jurisdiction and block development.

After receiving voluminous evidence consisting of more than 2,000 pages of documents and after conducting a public hearing, the Commission voted 4 to 1 that the Act 425 Agreement was, once again, a sham agreement that did not deprive the Commission of jurisdiction over the annexation petition. The Commission approved TeriDee's annexation request after reviewing the record evidence and determining that the request satisfied the statutory criteria. The Townships then appealed by right to the Wexford County Circuit Court, which affirmed the Commission's decision, finding that it was supported by competent, material, and substantial evidence on the whole record. The Court of Appeals denied leave to appeal.

The Townships now seek leave to appeal to this Court, claiming that this Court should review the Commission's administrative decision and factual findings *de novo*, decide that the property should not be developed, and unwind the annexation. The Application should be denied for both procedural and substantive reasons.

Procedurally, the Townships' two principal arguments cannot properly be reviewed by this Court due to mootness and lack of issue preservation. First, the Townships claim that the Commission lacked jurisdiction to determine the validity of the Act 425 Agreement and that the circuit court should make that determination. But the Wexford County Circuit Court has determined, in separate litigation between three of the same parties², that the same Act 425 Agreement is invalid. Thus, this Court cannot provide the relief requested by the Townships, and their appeal is moot. The Townships also claim that the underlying annexation proceeding was barred by collateral estoppel. But the Townships failed to raise that argument in the Commission, and thus it is not preserved for appeal.

Substantively, the Townships' arguments are meritless, as the Commission, the circuit court, and (implicitly) the Court of Appeals have all held. The *Casco*³ decision was correctly decided and is squarely on point, and thus the Commission had the power to determine its own jurisdiction and find that the Act 425 Agreement was a sham. Notably, the Townships conceded below that *Casco* was correctly decided, and in the separate circuit court litigation, the Townships affirmatively argued that the Commission *does* have jurisdiction over the Act 425 Agreement – which is the exact opposite of what they now argue to this Court.

Because the Townships are apparently aware of the fatal weaknesses in their arguments, they have tried numerous ill-conceived strategies to win on appeal. In the circuit court, the Townships baselessly accused the Attorney General of accepting a bribe from TeriDee's owners.⁴ In another brief, the Townships claimed (without support) that the Attorney General

² *TeriDee LLC, et al v Clam Lake Tp and Haring Tp*, Wexford County Circuit Court Case No. 13-24803-CH; Court of Appeals Docket No. 324022.

³ *Township of Casco v Michigan Boundary Comm'n*, 243 Mich App 392, 399; 622 NW2d 332 (2000).

⁴ Townships' Circuit Court Brief in Support of Motion for Stay, p. 24, n. 20.

was intentionally concealing documents.⁵ Then, the Townships blamed the Commission's decision on partisan politics, complaining about a "whimsical" decision allegedly "in favor of Republican-connected, private development interests."⁶

As in the appeals below, the Townships insist that a conspiracy exists. But the Commission's decision was not based on conspiracies, an abuse of powers, or politics. The Townships simply do not like the Commission's decision because they oppose development of the property, as they have candidly admitted: "The community does not need a bunch of 'Big Box' and 'Mid Box' stores to clutter-up the Exit 180 intersection, which is exactly what TeriDee is promising to bring to their property."⁷

Ultimately, despite the Townships' hyperbolic narrative, this case is an unremarkable administrative appeal. The circuit court's review of the Commission's decision was limited to determining whether it was supported by competent, material, and substantial evidence on the record. Here, ample record evidence supported the Commission's decision, and the circuit court properly affirmed the decision. There is no reason to grant leave to appeal. The City therefore requests that the Application be denied.

⁵ Townships' Circuit Court Supplemental Brief in Support of Motion to Supplement Record, pp. 4-5.

⁶ Townships' Circuit Court Brief on Appeal, p. 46.

⁷ Townships' Circuit Court Brief on Appeal, p. 27.

STATEMENT OF FACTS

I. History of Efforts to Develop the Property & First Annexation Petition

This case involves approximately 241 acres of real property located near M-55 and US-131 in Wexford County, Michigan. The property is owned by Appellee, TeriDee. TeriDee filed its first annexation petition on June 3, 2011, requesting annexation of the property from Clam Lake to the City. (Exhibit A⁸, Opinion, p. 2.) The proposed annexation would have facilitated a commercial development project that would create an estimated 850 to 1,000 jobs.

After TeriDee filed its 2011 annexation petition, Clam Lake and Haring hurriedly cobbled together an agreement under Public Act 425 of 1984 (“Act 425”) that contemplated some unspecified, future development for the same land. E-mails between Clam Lake and Haring officials made clear that the 2011 agreement was engineered to “avoid the possibility of the Boundary Commission making the decision on the development project.” The Commission concluded that “the 425 Agreement was created solely as a means to bar the annexation and not as a means of promoting economic development.” Although the Commission found that the Act 425 Agreement was invalid, the Commission nonetheless recommended denial of the annexation request at that time by a vote of 3 to 2.

II. Second Annexation Petition

On April 11, 2013, a City of Cadillac official notified Clam Lake that TeriDee intended to file a new annexation petition. Immediately thereafter, on May 8, 2013, Haring and Clam Lake hatched another ill-conceived scheme to enter into another Act 425 Agreement. The second agreement was both introduced and approved at a joint special meeting of the Clam Lake

⁸ Exhibit references are to the City’s Brief in Opposition to the Townships’ Application for Leave to Appeal to the Michigan Court of Appeals in Docket No. 325350. Per the practice of this Court at the application stage, the exhibits have not separately been appended to this brief, with the exception of “Attachment A” identified on page 15 of this brief.

and Haring Township Boards. Attorney Ronald Redick represented both townships in connection with the Act 425 Agreement. The agreement took effect on June 10, 2013.

On June 5, 2013, TeriDee filed its second annexation petition, which is the subject of this appeal. (Exhibit A, Opinion, p. 2.) Not surprisingly, the Townships objected to the annexation, arguing again that the Act 425 Agreement divested the Commission of jurisdiction. The Commission found that the annexation petition was legally sufficient by way of a memorandum dated July 17, 2013. The memorandum “recommend[ed] that the Boundary Commission examine the validity of this [Act 425] agreement following a review of the evidence to be provided at a public hearing in Wexford County[.]” (Exhibit B.)

III. State Boundary Commission Decision

After conducting a public hearing and reviewing submissions by interested parties (including TeriDee, the Townships, and the City), the Commission again concluded that the Townships’ Act 425 Agreement was a sham, and this time it approved the annexation. In its “Summary of Proceedings, Findings of Fact and Conclusions of Law” dated June 11, 2014, the Commission made a finding of fact that the Act 425 Agreement “was invalid because it was not being used to promote economic development.” (Exhibit C.) In support of that conclusion, the Commission made the following findings of fact:

- a. The economic development project that is allowed by the 425 Conditional Transfer is **not believed by the Commission to be viable**. The developer, and majority owner of the land encompassed, was not involved in the development of, or contacted for input on, the 425 Conditional Transfer before it was signed by the Townships.
- b. **Clam Lake Township received no benefit from the agreement**, i.e., there is no revenue sharing included. The Charter Township of Haring would receive all tax revenue.
- c. Copies of email correspondence between Clam Lake and Haring Township officials and area residents were obtained by the petitioner and provided to the Commission. These emails **discuss the 425 Conditional Transfer as a**

means to deny the Commission jurisdiction over the proposed annexation and prevent development of the area. See Exhibit D.

- d. The Charter Township of Haring's ability to effectively and economically provide the defined public services including **adequate water pressure in the event of a fire.**
- e. The timing of the 425 Conditional Transfer.
 - i. The development of the agreement was not initiated until after the Townships learned that an annexation request was going to be filed.

A. On Monday, April 15, 2013 an email from George Giftos, member of the Haring Township Planning Commission, to Clam Lake and Haring Township officials and area residents **discussed the 425 Conditional Transfer as a means to deny the Commission jurisdiction over the proposed annexation and prevent the development of the area.** (See Exhibit D.) This email:

- a. Mentions the rumor that TeriDee, L.L.C will file an annexation petition with the State Boundary Commission on June 4.
 - b. Opines that "the reason that the 425 agreement with Haring Twp. was thrown out by the State Boundary Commission was that it was deemed to be a ploy and had been filed AFTER the filing by Terri-Dee (sic) for annexation. If we were to pursue this again and got it done BEFORE June 4, that argument would no longer apply."
 - c. Further states, "Clam Lake Twp. is planning on meeting with their attorney to investigate what other options may be available to them in a closed session Wednesday night. Haring Twp. will have a special meeting at 3pm tomorrow (Tuesday)."
2. On May 8, 2013, the 425 Conditional Transfer was the subject of a public hearing and was approved by both Townships at a special joint meeting on the same night.

(Exhibit C, ROP 13A, pp. 3-4, emphasis added.) The Commission also made findings of fact regarding the merits of the annexation petition, which were "based on the criteria specified in

Section 9 of the State Boundary Commission Act [1968 PA 191, MCL 123.1009].” (Exhibit C, ROP 13A, pp. 4-5.):

- a. *Need for community services; the probable future needs for services; the probable effect of the proposed incorporation and of alternative courses of action on the cost and adequacy of services in the area.*
 - i. The economic development project planned by the petitioners requires connection to public water and sanitary sewer services in order to be constructed. These services are available immediately from the City of Cadillac. It is unknown when these services would be available from the Charter Township of Haring.
- b. *The present cost and adequacy of governmental services in the area.*
 - i. Clam Lake Township can only supply public water and sewer services via a 425 Conditional Transfer with the Charter Township of Haring that would require an estimated \$1-2 million dollars in additional construction costs than the infrastructure available from the City of Cadillac. The infrastructure is immediately available from the City of Cadillac. It is unknown when these services would be available from the Charter Township of Haring.
- c. *The practicability of supplying such services in the area.*
 - i. The infrastructure connection from the Charter Township of Haring is dependent on a number of factors, including local governmental action, procurement of easements, construction of additional pumping stations and the completion of the Haring Township Wastewater Treatment Plant. The timeframe to receive these services from the Charter Township of Haring is unknown, while the services available from the City of Cadillac can be accessed immediately.
- d. *The past and probable future growth, including increase and business, commercial and industrial development in the area.*
 - i. The economic development project planned by the petitioners will create new jobs in the area during construction and after it is built out.

(Exhibit C, ROP 13A, pp. 4-5.) The Commission therefore recommended by a vote of 4 to 1 that the Director of the Department of Licensing and Regulatory Affairs approve the annexation petition. (Exhibit C, ROP 13A, p. 5.)

On June 26, 2014, the Director of the Department of Licensing and Regulatory Affairs entered his Final Decision and Order, which ordered that the annexation is approved and that

“the conditional transfer of territory in Clam Lake Township to the Charter Township of Haring filed with the Michigan Secretary of State on June 10, 2003, and the amendment thereto subsequently filed, **is invalid.**” (Exhibit C, ROP 13A, emphasis added.)

IV. Circuit Court Appeal

The Townships thereafter appealed by right to the Wexford County Circuit Court. The Townships filed numerous motions – including motions to stay proceedings, to supplement the record, and to allow supplemental briefing – and submitted *four* briefs on the merits (a brief on appeal and three separate reply briefs directed at the briefs filed by the City, TeriDee, and the Attorney General). Suffice it to say, the Townships had ample opportunity to present their arguments to the circuit court.

In those many filings, the Townships made outrageous and unsubstantiated allegations. They accused the Attorney General of accepting a bribe from TeriDee’s owners,⁹ and they alleged that the Attorney General was intentionally concealing documents.¹⁰ Neither allegation was substantiated. Later in the proceedings, the Townships blamed the Commission’s decision on partisan politics, alleging that the Commission made a “whimsical” decision allegedly “in favor of Republican-connected, private development interests.”¹¹ The Townships spent far more energy on these conspiracy theories than they did actually trying to show that the Commission’s decision was not supported by competent, material, and substantial evidence.

After the many motions and briefs, and after oral argument, the circuit court issued a well-reasoned 15-page “Opinion on Appeal,” affirming the Commission’s decision. (Exhibit A.) The circuit court reviewed the record evidence and determined that the Commission’s finding that the Act 425 Agreement was a sham, as well as the Commission’s decision to approve the

⁹ Townships’ Circuit Court Brief in Support of Motion for Stay, p. 24, n. 20.

¹⁰ Townships’ Circuit Court Supplemental Brief in Support of Motion to Supplement Record, pp. 4-5.

¹¹ Townships’ Circuit Court Brief on Appeal, p. 46.

annexation, were both supported by competent, material, and substantial evidence on the whole record. The circuit court further held that the Commission's decision was not arbitrary, capricious, or a clear abuse or unwarranted exercise of discretion.

V. Applications for Leave to Appeal

The Townships thereafter filed an Application for Leave to Appeal to the Michigan Court of Appeals, which was denied "for lack of merit in the grounds presented" in an Order dated May 26, 2015. (Court of Appeals Docket No. 325350.¹²) The Townships then filed an Application for Leave to Appeal in this Court. For the reasons set forth below, the Application is without merit and should be denied.

¹² The cover page of the Townships' Application for Leave to Appeal incorrectly states that the Court of Appeals Docket Number was 324022. However, that appeal relates to separate civil litigation between the Townships and TeriDee, where the Townships also lost at the circuit court.

ARGUMENT

I. The State Boundary Commission had jurisdiction to decide whether the Townships' Act 425 Agreement was a sham agreement under *Casco*.

In the circuit court appeal, the Townships conceded that *Casco* was correctly decided.¹³ Yet now, the Townships argue that *Casco* – the chief published decision on State Boundary Commission authority – should be overturned and that the Commission should be stripped of its authority to determine whether it has jurisdiction over an annexation petition.

The Townships' extraordinary position must be rejected for the following reasons. First, the Townships' argument is moot in this case because the same Act 425 Agreement has already been deemed invalid by the Wexford County Circuit Court in a different case. Second, this Court denied the application for leave to appeal in *Casco*, and thus this Court has already decided that the holding in *Casco* does not need to be disturbed. Third, *Casco* is consistent with well-established administrative law principles and was correctly decided, such that no further review by this Court is warranted.

1. The Townships' challenge to *Casco* is moot.

In their attack of the *Casco* decision, the Townships claim that the circuit court – rather than the Commission – has the power to decide whether an Act 425 Agreement deprives the Commission of its jurisdiction to approve or deny an annexation petition. (Application, p. 17.) This Court should not even reach that question because in this appeal, that issue is moot.

The mootness doctrine provides that “[w]here a subsequent event renders it impossible for this Court to fashion a remedy, an issue becomes moot.” *Estate of Grable v Brown (In re Dudzinski)*, 257 Mich App 96, 112; 667 NW2d 68 (2003); quoting *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994); see also *School Dist of City of E Grand Rapids v*

¹³ Townships' Circuit Court Brief on Appeal, p. 30.

Kent County Tax Allocation Bd, 415 Mich 381, 391; 330 NW2d 7 (1982) (“An aspect of mootness includes the question of the court’s ability to fashion appropriate and effective relief to resolve the alleged controversy”).

Here, in a separate declaratory judgment action between the Townships and TeriDee, the Wexford County Circuit Court held that the *same* Act 425 Agreement is invalid. (Wexford County Circuit Court Case No. 13-24803-CH; Court of Appeals Docket No. 324022, pending.) The relief that the Townships seek – review of the Act 425 Agreement by a circuit court, instead of the Commission – has already been afforded to them, and they did not prevail. Based on that separate judgment, this Court cannot fashion relief in favor of the Townships, and the Townships’ challenge is therefore moot.

2. This Court already declined to review *Casco*, and there are no “special or compelling” reasons for overturning *Casco* now.

After the Court of Appeals rendered its published decision in *Casco*, the townships in that case filed an application for leave to appeal to this Court. After reviewing the application and amicus briefs, this Court denied the application in an order dated July 30, 2001. *Township of Casco v Mich State Boundary Comm’n*, 465 Mich 855; 632 NW2d (2001). Thus, this Court has already been asked to review *Casco* and declined to do so.

Indeed, the Townships’ request to overturn *Casco* should not be taken lightly. This Court will not overturn precedent absent a “special or compelling” justification, which requires “more than a mere belief that a case was wrongly decided.” *Lansing Schools Education Ass’n v Lansing Bd of Education*, 487 Mich 349, 367; 792 NW2d 686 (2010). This Court has articulated numerous factors that must be considered when overturning precedent, such as “(1) whether the rule has proven to be intolerable because it defies practical workability; (2) whether reliance on the rule is such that overruling it would cause a special hardship and inequity; (3) whether

upholding the rule is likely to result in serious detriment prejudicial to public interests; and (4) whether the prior decision was an abrupt and largely unexplained departure from precedent.” *Id.* at 369. The Townships have made no effort to demonstrate such “special or compelling” justification here or to even address this Court’s criteria, nor does any justification exist.

3. Casco was correctly decided.

Even if this Court were inclined to review *Casco*, the decision should be upheld. In *Casco*, a developer filed a petition with the State Boundary Commission, seeking to annex certain land in Casco Township and Columbus Township into the City of Richmond. Shortly before the annexation petition was filed, Columbus Township and Casco Township entered into Act 425 agreements with neighboring Lenox Township to transfer the same land to Lenox Township. The Commission, however, concluded that the Act 425 agreements did not meet the statutory criteria and therefore approved the annexation. The townships filed suit, and the circuit court upheld the annexation.

The Court of Appeals agreed with the circuit court's holding that the Act 425 agreements were nothing more than “fictional agreements intended only to deprive the [State Boundary Commission] of jurisdiction.” *Id.* at 398-99. The court found that the townships did not have any “real plan for economic development” and that the Act 425 agreements were adopted solely to “ward off any attempts by municipalities to annex a portion of the [t]ownships.” *Id.* at 402. Consequently, the Court of Appeals held that the Act 425 agreements were “illusory” and therefore did not bar the State Boundary Commission from approving the annexation.

The townships in *Casco* argued that the Commission “exceeded its authority or jurisdiction when it undertook to decide the legal validity of the townships' Act 425 agreements.” *Casco*, 243 Mich App at 397. The Court of Appeals disagreed and held that the Commission did

not exceed its authority or jurisdiction, reasoning in part that the Commission must be able to evaluate the validity of Act 425 agreements to exercise its statutorily granted powers:

The townships argue that either the circuit court should review the issue of jurisdiction de novo or that the circuit court should have sole jurisdiction to determine the validity of an Act 425 agreement. According to the townships, any document purporting to be an Act 425 agreement, once signed and filed according to the specified procedure, absolutely bars any action on the part of the commission concerning the same territory, without regard to the substance of the agreement. We disagree. **In light of the broad grant of statutory authority to the commission over matters relating to the establishment of boundaries and annexations, we hold that the commission had the authority and jurisdiction to decide the validity of the Act 425 agreements. Logic dictates that the commission had the authority to consider the validity of two agreements that, if valid, would have barred its authority to process, approve, deny, or revise a petition or resolution for annexation.** The commission would not otherwise have been able to perform its function of resolving the petition.

Id. at 399 (emphasis added).

Casco is harmonious with black-letter Michigan administrative law. This Court has long held that an administrative agency is “competent to determine its own jurisdiction.” *Judges of 74th Judicial Dist v County of Bay*, 385 Mich 710, 728-29; 190 NW2d 219 (1971); *see also* *Petition for Labor Mediation Bd v Jackson County Rd Comm’n*, 365 Mich 645, 655; 114 NW2d 183 (1962) (labor mediation board had authority to “determine if the petition presented to it properly invoked its jurisdiction”).

Consistent with that well-established authority, the *Casco* court held that the Commission could properly determine whether it had jurisdiction over an annexation petition by determining whether an Act 425 Agreement was “in effect.” Making this determination is necessary based on the language of Section 9 of Act 425:

While a contract under this act is in effect, another method of annexation or transfer shall not take place for any portion of an area transferred under the contract.

MCL 124.29. Thus, for the Commission to determine whether it has jurisdiction over an annexation petition (which it indisputably has the power to decide), the Commission must

determine whether an Act 425 Agreement is “in effect” – i.e., whether it is a bona fide agreement under Act 425, or a sham document posing as an Act 425 Agreement for the sole purpose of thwarting the Commission’s jurisdiction. The *Casco* court correctly decided that the Commission has such authority, and no grounds exist for overturning the decision.

Perhaps the best support for upholding *Casco* comes from the Townships themselves. In the declaratory judgment action between the Townships and TeriDee, the Townships affirmatively argued that the Commission “**is not only capable of determining the validity of Act 425 agreements, but is uniquely suited to do so, since such determinations must be made in every annexation case involving an Act 425 agreement.**” (Townships’ September 10, 2013 Brief in Support of Motion for Summary Disposition, Case No. 13-24803-CH, p. 13, **Attachment A.**) The Townships therefore insisted that the Commission, *not* the circuit court, should review the validity of their Act 425 Agreement under the doctrine of primary jurisdiction. *Id.* On this, the City agrees, as did the *Casco* court: the Commission, not the circuit court, is the proper body to determine whether an Act 425 Agreement divests the Commission of its jurisdiction over an annexation petition.

4. The Commission had authority under *Casco* to determine the invalidity of the Townships’ sham Act 425 Agreement.

The Townships next try to distance the facts of this case from *Casco*, arguing unpersuasively that much of *Casco* is “dictum” that has “caused great mischief.” (Application, p. 21.) The Townships engage in a long, tortured deconstruction of *Casco* in a misguided effort to confuse the Court as to its holding.

Despite the Townships’ smoke and mirrors, the *Casco* decision is clear and straightforward. The Court of Appeals explicitly held that the Commission does have jurisdiction to determine whether an Act 425 Agreement is a sham, which is exactly what the

Commission decided in this case. *Casco* is directly on point, and the Townships' claim that the Commission lacked jurisdiction here is wholly without merit.

The Townships go to great lengths to overstate the Commission's decision, claiming that the Commission will now "invalidat[e] any Act 425 Agreement that will interfere with the [Commission's] annexation powers, based on irrelevant factors . . ." (Application, p. 25, emphasis in original.) Of course, the Townships cite no other decisions of the Commission related to Act 425 agreements to support this sweeping claim, nor would any other decisions be properly before this Court. The Townships' hand-wringing and "sky is falling" rhetoric should not distract from what this case is actually about: an ordinary appeal of an administrative decision by an agency that even the Townships concede is "uniquely suited" to render such a decision. The Townships are not entitled to any relief from this Court.

II. This Court's review of the State Boundary Commission's decision is limited to whether the decision was supported by competent, material, and substantial evidence on the record.

As they did in the circuit court and Court of Appeals, the Townships attempt to stretch case law to argue that this Court should review *de novo* the State Boundary Commission's factual findings concerning the Townships' Act 425 Agreement. Specifically, the Townships assert that the State Boundary Commission's interpretation of a statute (Act 425) is a question of law that is reviewed *de novo*. (Application, p. 18.)

The Townships are wrong. The Commission was not called upon to interpret a statute; rather, the Commission determined whether, as a factual matter, the Townships' Act 425 Agreement was a "sham" agreement, and thus ineffective in depriving the Commission of jurisdiction over the annexation proceedings. The Court of Appeals in *Casco* specifically held that the Commission's conclusion that an Act 425 agreement is illusory is reviewed under the "competent, material, and substantial evidence" standard – *not* the *de novo* standard. *Casco*, 243

Mich App at 399. The Townships' lengthy citations to case law involving other administrative agencies and other types of administrative decisions are merely the Townships' attempt to avoid the unequivocal holding of *Casco*, which makes clear that the Commission's decision is not reviewed *de novo*. As the *Casco* Court plainly stated, "[t]he townships argue that either the circuit court should review the issue of jurisdiction *de novo* or that the circuit court should have sole jurisdiction to determine the validity of an Act 425 agreement. . . . **We disagree.**" *Id.* at 399 (emphasis added).

Casco is consistent with well-settled authority from this Court, which recognizes that annexation decisions are "essentially a political question":

Resolution of a controverted annexation unavoidably involves **political considerations and the exercise of a large measure of discretion**. Evaluation of the record and of the commission's balancing of the criteria and determination of reasonableness implicates the merits of the proposed annexation and **poses considerable risk of drawing the judiciary into the resolution of what continues to be** -- despite the adoption of the administrative format -- **essentially a political question**.

Midland v Mich State Boundary Comm'n, 401 Mich 641, 673-74; 259 NW2d 326 (1977) (emphasis added). The *Midland* Court concluded that "the judiciary ought to be **especially circumspect** in reviewing [state boundary] commission rulings and determinations." *Id.* at 674 (emphasis added).

The Court of Appeals has likewise recognized the judiciary's narrow review of annexation decisions, holding that the appellate court's review "must be undertaken with considerable sensitivity in order that the courts **accord due deference to administrative expertise and not invade the province of exclusive administrative fact-finding** by displacing an agency's choice between two reasonably differing views." *St Joseph v Mich State Boundary Comm'n*, 101 Mich App 407, 411; 300 NW2d 578 (1980), quoting *Mich Employment Relations*

Comm'n v Detroit Symphony Orchestra, Inc, 393 Mich 116, 124; 223 NW2d 283 (1974) (emphasis added).

To ensure that appropriate deference is afforded, the appellate courts have found that the State Boundary Commission's decisions are reviewed "for a determination [of] whether the administrative action is supported by 'competent, material and substantial evidence on the whole record.'" *Midland*, 401 Mich at 672; *see also St Joseph*, 101 Mich App at 412. That is consistent with *Casco*, which found that the exact decision under review here – whether an Act 425 Agreement is a "sham agreement" – is reviewed under the competent, material, and substantial evidence standard.

The Townships have made no effort to apply the correct standard of review. Instead, they urged the circuit court and Court of Appeals (and now this Court) to sit as a *de novo* fact-finding body and decide, without any deference to the State Boundary Commission, and without regard to *Casco*, whether the Act 425 Agreement was, as a question of fact, a sham. Such review is clearly contrary to *Casco*, *Midland*, *St Joseph*, and every other annexation case.

The circuit court was not being called upon in the first instance to decide whether the Townships' Act 425 Agreement was a sham; the Commission has already heard arguments and received evidence on that issue and rendered a decision based on its findings of facts. The review of the Commission's decision by the circuit court regarding the Act 425 Agreement and the approval of the annexation was limited, and the circuit court was required to affirm the Commission's decision if it found it to be supported by competent, material, and substantial evidence on the record, even if the circuit court might have reached a different decision based on that evidence. *See Kester v Sec'y of State*, 152 Mich App 329, 335; 393 NW2d 623 (1986).

The circuit court applied the correct standard of review and concluded that the Commission's decision was supported by competent, material, and substantial evidence on the whole record. The Townships' attempt to slip a different standard of review past this Court is disingenuous and should be rejected.

III. The State Boundary Commission's decision was supported by competent, material, and substantial evidence on the record.

The Townships' Application for Leave to Appeal should be denied because the circuit court properly considered this administrative appeal and determined that the Commission's decision was supported by competent, material, and substantial evidence on the record. No further review by this Court is warranted.

1. The Commission correctly found that the Townships' Act 425 Agreement, approved in 2013, was a sham like the agreement in *Casco*.

Central to these annexation proceedings have been the Townships' successive Act 425 Agreements, which the Commission has *twice* found to be sham agreements. As discussed above, municipalities cannot adopt a sham Act 425 agreement to thwart an annexation petition or to deprive the State Boundary Commission of jurisdiction to consider an annexation petition. *Casco*, 243 Mich App at 392.

The Commission found that the Act 425 Agreement was a sham for numerous reasons, all of which were supported by the record. Indeed, the Commission wrote four pages of factual findings in its Summary of Proceedings, Findings of Fact, and Conclusions of Law. (Exhibit C, ROP 13A.) First, the Commission noted that TeriDee "was not involved in the development of, or contacted for input on, the [Act 425 Agreement] before it was signed by the Townships." (Exhibit C, ROP 13A, p. 3.) Based on that record evidence, the Commission found that excluding the developer from a so-called economic development plan shows the illusory nature of the agreement.

The Commission further found that the Act 425 Agreement was a sham because “Clam Lake Township received no benefit from the agreement, i.e., there is no revenue sharing included.” (Exhibit C, ROP 13A, p. 3.) This finding is supported by the plain language of the Act 425 Agreement. The Act 425 Agreement is blatantly one-sided in favor of Haring and includes a sweepingly broad, one-way indemnification and hold harmless provision, which puts Clam Lake on the hook for the costs of any proceedings arising out of the agreement. (Exhibit D, Act 425 Agreement, ROP 2A, p. 26.) Clam Lake is also required to pay all of Haring’s costs and expenses, including **actual** attorney fees, arising out of the drafting and obtaining approval of the agreement, implementing new zoning requirements, and returning jurisdiction to Clam Lake upon termination of the agreement. (Exhibit D, ROP 2A, pp. 26-27.) Even more significantly, the agreement requires Clam Lake to be “solely responsible” for paying and financing *all* of Haring’s costs for constructing water and wastewater infrastructure. (Exhibit D, ROP 2A, p. 5.)

In exchange for this tremendous liability, the Commission recognized that Clam Lake would receive **no revenue sharing**. (Exhibit C, ROP 13A, p. 3.) The Commission had found the prior (2011) agreement to be invalid, in part, because Clam Lake received no benefit (no revenue sharing), and yet the new agreement also provided no revenue sharing. Such an agreement is so blatantly one-sided and unfair that no reasonable municipal official would approve it on behalf of Clam Lake unless the parties knew that the agreement was merely a sham intended to divest the Commission of its jurisdiction to consider the annexation petition. Thus, the Commission again found the Act 425 Agreement to be a sham, based on competent, material, and substantial evidence in the record.

At the public hearing held before the Commission on October 25, 2013, the Townships' joint counsel Mr. Redick boldly proclaimed that this time there are no incriminating e-mails - *they do not exist*. That statement was false, and incriminating e-mails were in fact discovered and submitted to the Commission as a part of the record. At that same public hearing, George Giftos appeared and advised the Commission that he sits on the Haring Township Planning Commission and discussed both the zoning and development of the subject property in that context. Mr. Giftos, despite the revealing and incriminating e-mails that began in April of 2013, then falsely claimed that Haring Township sees the inevitability of commercial development of the property.

The Commission relied on the damaging e-mails between the Townships' officials concerning the Act 425 Agreement. In their Application, the Townships (after first denying that they even existed) intentionally misrepresent that the e-mails were merely "the uninformed personal opinions of one neighborhood gadfly." (Application, p. 35.) This description is deliberately misleading because – as the Commission found – the e-mails were exchanged between several of the Townships' officials, including Haring Township Planning Commissioner George Giftos, Clam Lake Township Supervisor Dale Rosser, and Haring Township Supervisor Bob Scarbrough. While the Townships would like nothing better than to distance themselves from Mr. Giftos now for obvious reasons, referring to Mr. Giftos merely as a "neighborhood gadfly" is intentionally misleading and false.

The Township falsely denied that any e-mails existed and then falsely told the Commission that "[t]he timing of their Act 425 Agreement was not influenced" by the fact that TeriDee "might reapply [for annexation] in June 2013." (ROP 7C, p. 19.) The Townships

claimed that a new annexation petition was a “well-known fact,” and that the Township officials were “all quite able” to predict that a new petition would be filed. (ROP 7C, p. 18.)

But as the Commission correctly found, the e-mails establish that a “rumor” about a new annexation petition spurred the Townships to begin throwing together a new, illusory Act 425 Agreement. Specifically, an e-mail from George Giftos (Haring Township Planning Commissioner) to numerous individuals, including Dale Rosser (Clam Lake Township Supervisor) and Mike Lueder (Clam Lake Township Downtown Development Authority Vice-Chair), dated April 15, 2013, states as follows in relevant part:

“**New developments** in an issue we thought had been put to rest . . .

The rumor is that Teri-Dee will re-file for annexation to the City on June 4. How can that happen, you ask? I thought we had 2 years before they could file again. Well, we did, but it’s 2 years from the original date of their filing and that was June 4, 2 years ago! **If they fast-track the project and the State Boundary Commission approves, Terri-Dee [sic] could conceivably be all set to go by the end of summer.”**

(Exhibit E, ROP 10C, emphasis added.) This e-mail was sent just four days after a City official disclosed that TeriDee would be filing a new annexation petition. Moreover, Haring Planning Commissioner Giftos’s characterization of the “rumor” as a “new developmen[t]” certainly does not suggest that it was a “well-known fact,” as the Townships alleged at the Commission.

But Haring Planning Commissioner Giftos had a plan for the Townships to thwart the annexation, which he included in the same e-mail message:

Now, **what are our options?** As I see it, the reason that the 425 agreement with Haring TWP was thrown out by the State Boundary Commission was that it was **deemed to be a ploy** and had been filed AFTER the filing by Terri-Dee [sic] for annexation. **If we were to pursue this again and got it done BEFORE June 4, that argument would no longer apply.**

(ROP 10C, emphasis added, capitalization in original.) This e-mail shows that on April 15, 2013 – just days after they learned of TeriDee’s forthcoming petition – the Townships (“we”) were

already devising a scheme to block the annexation by approving a new Act 425 Agreement. Haring Planning Commissioner Giftos noted that the previous sham Act 425 Agreement failed because it was “deemed to be a ploy and had been filed AFTER” the annexation petition, but if the Townships were to approve a new Act 425 Agreement *before* the annexation petition was filed, then the Townships would be able to thwart annexation. The Townships’ intentions could not be clearer.

The e-mail continues on to discuss Clam Lake’s negotiations with Haring Township for sewer services, but Mr. Giftos stated that “[t]he only drawback to this is that **these services are not immediately available** but will be within a few years . . .” (Exhibit E, ROP 10C, emphasis added.) This shows that Haring will not be able to provide services immediately. Conversely, the City stands ready to provide immediate, economical water and sewer services, as the Commission found.

Haring Planning Commissioner Giftos also noted in the e-mail that “Clam Lake TWP is planning on meeting with their attorney to investigate what other options may be available to them in a closed session Wednesday night [April 17, 2013]. Haring TWP will have a special meeting at 3PM tomorrow (Tuesday) [April 16, 2013], which I will attend.” (Exhibit E, ROP 10C.) Shortly after Clam Lake’s meeting, on April 21, 2013, Haring Planning Commissioner Giftos e-mailed Clam Lake Supervisor Dale Rosser:

Hi Dale,

What was the result of the meeting between you, the Clam Lake TWP attorney and Bob Scarbrough this week? **I know we don’t want to tip our hand** but is there anything I can pass along as far as the course of action we plan to take is concerned?

George

(Exhibit E, ROP 10C, emphasis added.) Clam Lake Supervisor Rosser then sent Haring Planning Commissioner Giftos a coy response on April 24, 2013:

George,
 Nothing to say at this time. We were just exploring options that may be available to us.
 hopefully [sic] more to come.
 Dale

(Exhibit E, ROP 10C.)

Later, on May 4, 2013, Haring Planning Commissioner Giftos sent a message to Clam Lake Supervisor Rosser and Haring Supervisor Bob Scarbrough, discussing his conversation with Clam Lake DDA Vice-Chair Mike Lueder. (Exhibit E, ROP 10C.) Haring Planning Commissioner Giftos explained that Clam Lake DDA Vice-Chair Lueder **“wants me to continue to oppose any commercial development of the TerriDee [sic] property, an[d] if that goes down to defeat, so be it. We at least have fought the battle and been consistent.”**

(Exhibit E, ROP 10C, emphasis added.)

Haring Planning Commissioner Giftos also admitted that the PUD requirements proposed by the Townships in the Act 425 Agreement would thwart, not promote, economic development of the TeriDee property:

I also told him my personal feeling that if I were bringing a retail business to Cadillac, and I were to investigate this PUD with its restrictions, I would choose to locate at Boon Road where the other commercial development is going on, so I feel that **while we would allow commercial development at M55, it wouldn't happen.**

(Exhibit E, ROP 10C, emphasis added.) Thereafter, the Townships approved the new Act 425 Agreement with those restrictive PUD requirements.

The impact of these e-mails was not lost on the Commission: These e-mails and the consistent use of the word “we” show Haring Planning Commissioners Giftos’s active participation as a township official and not merely “the personal opinions of one neighborhood gadfly,” as the Townships characterized the e-mails to the circuit court and now to this Court.

Even worse, the e-mails prove that the “new and improved” Act 425 Agreement was hastily contrived after the Townships learned that TeriDee would be filing a new annexation petition.

The Townships intentionally approved the Act 425 Agreement before the deadline for filing the annexation petition so that it would not look like a “ploy” – which is exactly what it was. The e-mails further make clear that the Act 425 Agreement was designed to block economic development, not promote it. Haring Planning Commissioner Giftos openly stated that if he were a commercial developer, he would **not** develop the TeriDee property with the restrictive PUD requirements in the Townships’ Act 425 Agreement. (Exhibit E, ROP 10C.) The Townships knew that economic development simply **“wouldn’t happen”** under their sham Act 425 Agreement. In fact, they openly opposed **“any economic development”** of the TeriDee property. The e-mails confirm what the Townships insinuate in their brief: the Townships oppose real development of the Property and will do anything to stop it.

The Commission received the incriminating e-mail evidence as part of the record and relied on them and other evidence to conclude that the Act 425 Agreement was an invalid sham agreement, designed to divest the Commission of jurisdiction and prevent economic development of the property. (Exhibit C, ROP 13A.) The e-mails constitute competent, material, and substantial evidence in support of the Commission’s conclusion that the Townships’ Act 425 Agreement was a sham. The circuit court agreed, noting that “the activities of the Townships in response to learning of the current annexation petition led to a quick and unplanned enactment of the Act 425 Agreement **which is born out by substantial evidence.**” (Exhibit A, Opinion, p. 8, emphasis added.)

The Commission found that the timing of the Act 425 Agreement revealed its illusory nature. In its Findings of Fact, the Commission concluded that “[t]he development of the

agreement was not initiated until after the Townships learned that an annexation request was going to be filed.” (Exhibit C, ROP 13A, p. 4.) In making this finding, the Commission relied on correspondence in the record confirming that the Act 425 Agreement was contemplated after word leaked that TeriDee would be filing a new annexation petition. (Exhibit C, ROP 13A, p. 4.) This, too, is competent, material, and substantial evidence that supports the Commission’s decision.

Based on the record evidence, the Commission made well-supported findings of fact and concluded that the Townships’ Act 425 Agreement was invalid as a “sham” agreement. That decision was supported by competent, material, and substantial evidence on the record, as the circuit court correctly held – even if a different conclusion could have been reached based that evidence. *See Kester*, 152 Mich App at 335.

2. The Commission’s decision to approve the annexation was supported by competent, material, and substantial evidence on the whole record.

After the Commission determined that the Townships’ Act 425 Agreement was a sham, the Commission recommended approval of the annexation request. The Commission’s decision to recommend approval of the annexation was supported by hundreds of pages of record evidence. In reviewing that record evidence, the Commission made several factual findings based on the statutory criteria, which is set forth in the Commission’s written decision, and found that those criteria supported approval. (Exhibit C, ROP 13A, pp. 4-5.) The circuit court correctly affirmed the Commission’s decision, finding that it was supported by competent, material, and substantial evidence on the whole record.

The record is clear that the Commission considered all of the statutory criteria in approving the annexation request: “The State Boundary Commission has considered the requirements in section 9 of 1968 PA 191, MCL 123.1009 and has come to the conclusion that

these criteria support the majority vote of the Commission.” (Exhibit C, ROP 13A, p. 5.) The Commission analyzed various criteria in detail, including the need for community services; the probable future needs for services; the probable effect of the annexation and of alternative courses of action on the cost and adequacy of services in the area; present cost and adequacy of governmental services in the area; the practicability of supplying services in the area; and the past and probable future growth in the area. (Exhibit C, ROP 13A, pp. 4-5.)

The Commission properly evaluated the statutory criteria and decided to approve the annexation. That discretionary decision, described by this Court as an “essentially political question,” is reserved for the Commission. The Commission based its decision on its voluminous and well-developed record, including documents and arguments presented by the Townships, the City, and TeriDee. Because its decision was supported by competent, material, and substantial evidence on the record, and because the circuit court properly affirmed the decision, leave to appeal should be denied.

IV. The annexation proceeding was not barred by collateral estoppel.

Finally, in a last-ditch effort to circumvent the Commission’s decision, the Townships argue that TeriDee’s 2013 annexation petition was barred by collateral estoppel because the Commission previously denied TeriDee’s 2011 annexation petition.

Importantly, the Townships did not raise the issue of collateral estoppel in the Commission, and thus it is not preserved for appeal. *See Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008) (“a litigant must preserve an issue for appellate review by raising it in the trial court”); *see also* MCR 2.111(F) (affirmative defense “must be stated in a party’s responsive pleading, either as originally filed or as amended in accordance with MCR 2.118). Collateral estoppel “is waived if not set forth in [the] first responsive pleading.” *Concerned Citizens of Acme Tp v Acme Tp*, unpublished opinion per curiam of the Court of Appeals, No 264109 (Sep

20, 2007) (Exhibit F), *citing Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 8; 614 NW2d 169 (2000).

Here, despite filing at least six briefs with the State Boundary Commission, the Townships did not claim that TeriDee's 2013 annexation petition was barred by collateral estoppel. Even in their objections to the sufficiency of TeriDee's petition, the Townships made no mention of collateral estoppel. They did not raise collateral estoppel until they filed their appeal in circuit court – which was simply too late. The circuit court recognized this deficiency, noting that “the issue may not be preserved for appeal.” (Exhibit A, Opinion, p. 13.) This Court should not grant leave to consider an issue that has been waived.

Even if the issue were preserved, the Townships' argument is meritless. First, the Michigan Legislature has expressly provided that a new annexation petition may be filed and accepted by the Commission two years after a petition is denied:

The commission shall reject a petition or resolution for annexation of territory that includes all or any part of the territory which was described in any petition or resolution for annexation filed within the preceding 2 years and which was denied by the commission or was defeated in an election under subsection (5).

MCL 117.9(6).

As this Court is well aware, “if the language [of a statute] is clear and unambiguous, it is presumed that the Legislature intended the meaning expressed in the statute. Judicial construction of an unambiguous statute is neither required nor permitted.” *McCormick v Carrier*, 487 Mich 180, 191-92; 795 NW2d 517 (2010).

The Michigan Court of Appeals has applied this same rule of statutory construction to the statute at issue, MCL 117.9(6). *Avon v Mich State Boundary Comm'n*, 96 Mich App 736, 752; 293 NW2d 691 (1980). In *Avon*, the appellant township argued that an annexation petition filed in 1967 but delayed until November 1972 had the effect of barring a subsequent annexation

petition filed in May 1974. *Id.* at 751-52. The *Avon* court held that “there is no ambiguity in [MCL 117.9(6)]” and that the Commission did not err by finding the second petition to be legally sufficient. *Id.*¹⁴

The statutory language at issue is unambiguous. *See id.* Under its plain language, a subsequent annexation petition cannot be filed until two years have passed from the filing of any prior petition. After two years, by obvious implication, an annexation petition may be filed with (and accepted by) the Commission. The Legislature did not condition a subsequent annexation petition on a material change of factual circumstances, as the Townships suggest. The plain language of the statute only requires the passage of two years. The Townships’ attempt to add extrastatutory conditions must be rejected.

Moreover, contrary to the Townships’ arguments, the 2013 annexation proceeding was *not* identical to the 2011 proceeding. The Commission was presented with different evidence, different arguments, and even a different Act 425 agreement – a difference that the Townships themselves emphasized at the Commission. The Townships have pointed to no cases where a subsequent annexation petition was barred by collateral estoppel. In fact, the Commission previously rejected such an argument in the proceedings underlying the *Casco* decision. (Exhibit G, ROP 7C, Exh. 34.) The Townships’ argument is without merit and does not create grounds for granting leave to appeal.

¹⁴ The Court of Appeals has also held that the Commission’s interpretation of MCL 117.9(6) “is entitled to the most respectful consideration and should not be set aside without cogent reasons.” *St Joseph v Mich State Boundary Comm’n*, 101 Mich App 407, 414-415; 300 NW2d 578 (1980).

CONCLUSION

As the circuit court correctly held, the Commission's administrative decision was supported by competent, material, and substantial evidence on the whole record. This case does not warrant further review by this Court. The City therefore requests that this Court deny the Townships' Application for Leave to Appeal.

FOSTER, SWIFT, COLLINS & SMITH, P.C.

Dated: July 14, 2015

By: /s/ Michael D. Homier

Michael D. Homier (P60318)

Laura J. Genovich (P72278)

1700 East Beltline, N.E., Suite 200

Grand Rapids, MI 49525

(616) 726-2230

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